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Paper No. 10

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MAILED

JAN 31 2011

OFFICE OF PETITIONS

In re Patent No. 5968067 :
Issue Date: 10/19/1999 :
Application Number: 09/123277 : LETTER DISMISSING PETITION
Filing Date: 07/28/1998 :
For: SURGICAL PENILE DILATOR :
INSTRUMENT AND METHOD FOR ITS :
USE :

This is a decision on the petition filed on November 12, 2010, under 37 CFR 1.377 to review the prior refusal of the PTO to accept and record a timely maintenance fee payment for the above-identified patent.

The petition is **dismissed**.

The patent issued on October 19, 1999. The first and second maintenance fees were timely paid. The window for payment of the third maintenance fee opened on October 19, 2010. The maintenance fee may be paid until April 19, 2011, or, with a surcharge for late payment, from April 20, 2011 through October 19, 2011.

Petitioners state that payment of the third maintenance fee was timely proffered, but was applied not applied to the correct patent number.

Petitioners request that the maintenance fee be applied to the above-referenced patent.

A grantable petition under 37 CFR 1.377 to accept and record a maintenance fee requires:

(1) submission of the petition be submitted within two months of the action complained of;

- (2) payment of the petition fee;
- (3) proof that the maintenance fee, and any applicable surcharge, was received in the Office prior to the date of patent expiration, and
- (4) proof that proper identification of the patent and application numbers under 37 CFR 1.366(c) was submitted with the maintenance fee payment.

The petition lacks item (2) and (4).

In regards to item (2), a petition fee of \$200.00 is required upon filing of a petition under 37 CFR 1.377. No petition fee has been submitted. Therefore, the merits of this petition will not be discussed. Petitioner must submit the required fee with a renewed petition.

In regards to item (4), the Office cannot determine whether at least one mandatory identifier was correct as required by 37 CFR 1.366(c). While petitioner has provided a copy of the check submitted as payment of the maintenance fee, a copy of the transmittal letter containing the proper identifying information has not been provided. As such, petitioners must provide a copy of any transmittal letter previously sent to the Office in order for the Office to determine whether or not the present petition is grantable.

Any renewed petition should be submitted within **TWO (2) MONTHS** to be considered timely.

The address in the petition is different than the correspondence address. A courtesy copy of this decision is being mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record. A change of correspondence address (copy enclosed) should be completed and returned if the correspondence address need to be updated.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition,
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

By FAX: (571)273-8300
Attn: Office of Petitions

By hand: Customer Service Window

Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any questions concerning this matter may be directed to the undersigned at (571) 272-3231.



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